

EXHIBIT 12

9 REMOTE AND VIDEOTAPED DEPOSITION OF JEAN
10 POPEWELL, Ph.D., taken in California, at 12:34,
11 p.m., Wednesday, September 2, 2020, before
12 Theresa JoAnn Phillips-Blackwell, CSR 12700.

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1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION
4

5 IN RE PACIFIC FERTILITY CENTER)
6 LITIGATION) No. 3:18-cv-01586-JSC
6 _____)
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19 Also Present: Philip Knowles and Simon Knowles,
20 videographers/technicians
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04:04 1 Q. Do you -- do you have a memory of what it
04:04 2 sounds like when the fill cycle is complete?

04:04 3 MR. TARANTINO: Objection. Assumes facts.

04:04 4 THE WITNESS: There's silence. I mean...

04:04 5 BY MR. DUFFY:

04:04 6 Q. Okay. So you stop -- you stop hearing the flow
04:04 7 of liquid nitrogen and the bubbling inside Tank 4?

04:04 8 That's how you know?

04:04 9 MR. TARANTINO: Objection. Assumes facts.

04:04 10 Mischaracterizes testimony. Speculation.

04:04 11 THE WITNESS: There is no more sound being
04:04 12 emitted from the tank, so...

04:04 13 BY MR. DUFFY:

04:04 14 Q. So silence is how you know the fill cycle's
04:05 15 over?

04:05 16 A. Yes.

04:05 17 Q. Do you stand next to the freezer the whole time
04:05 18 a fill cycle is being completed?

04:05 19 A. No.

04:05 20 Q. Did you stand next to the freezer on March 2
04:05 21 and observe and listen to the fill cycle for the entire
04:05 22 time?

04:05 23 A. No.

04:05 24 Q. On March 2 did you see moisture on the outside
04:05 25 of Tank 4?

04:05 1 A. No.

04:05 2 Q. On March 2 did you see ice outside -- on the
04:05 3 outside of Tank 4?

04:05 4 A. No.

04:05 5 Q. On March 2 did you see moisture on the floor
04:05 6 adjacent to or under Tank 4?

04:05 7 A. No.

04:05 8 Q. On March 2 did you see any deformations inside
04:05 9 Tank 4?

04:05 10 A. No.

04:05 11 Q. The next measurement I have associated with --
04:06 12 with you is for March 3 of 2018. Do you see that?

04:06 13 A. Yes.

04:06 14 Q. And what was the measurement that you had that
04:06 15 day?

04:06 16 A. Fourteen.

04:06 17 Q. And it's associated with your name here in
04:06 18 Exhibit 211; is that right?

04:06 19 A. Yes.

04:06 20 Q. Do you have a personal memory of making the
04:06 21 LN-2 measurement for Tank 4 on March 3, 2018?

04:06 22 A. Yes.

04:06 23 Q. Tell me what your personal memory is of
04:06 24 measuring the LN-2 in Tank 4 on March 3.

04:06 25 A. Repeating the same thing I had done the

04:06 1 previous day.

04:06 2 Q. And please tell me, what you do remember of --
04:06 3 of you measuring the LN-2 in Tank 4 on -- on Saturday,
04:06 4 March 3?

04:07 5 A. Pressing the auto-fill button on the
04:07 6 controller, filling Tank 4, measuring it with the
04:07 7 dipstick, and then entering the value into Reflections.

04:07 8 Q. And the -- the value that you entered was
04:07 9 14 inches; correct?

04:07 10 A. Yes.

04:07 11 Q. So for all six of the measurements that you did
04:07 12 for Tank 4 in February and March, you have the exact
04:07 13 same measurement; correct?

04:07 14 A. Correct.

04:07 15 Q. Can you explain how it is that you got the
04:07 16 exact same measurement for all six days?

04:07 17 MR. TARANTINO: Objection. Lacks foundation.
04:07 18 Calls for speculation.

04:07 19 THE WITNESS: I filled it to a part of the
04:07 20 yardstick that was -- I know was adequate level of
04:07 21 liquid nitrogen, and so that's just the target I chose.

04:07 22 BY MR. DUFFY:

04:07 23 Q. Did you intend for it to hit the 14 inches?

04:07 24 A. I intended to hit the 14 inches.

04:08 25 Q. And so you brought it to that level by design?

04:08 1 A. Yes.

04:08 2 Q. And then you measured it and got it to
04:08 3 14 inches all -- all 6 times; correct?

04:08 4 A. That was my target for filling the tank.

04:08 5 Q. Sure. How would you know whether you filled it
04:08 6 to 14 inches without measuring it?

04:08 7 A. Are you referring to any tank, or are you
04:08 8 referring to Tank 4 at the time of -- which time period
04:08 9 are you referring to?

04:08 10 Q. Yeah. Sure. Let me -- let me try that
04:08 11 question again.

04:08 12 Your goal, obviously, for Tank 4 here in this
04:08 13 period of February and March was to get it to 14 inches;
04:08 14 correct?

04:08 15 THE WITNESS: Yes.

04:08 16 MR. TARANTINO: Objection. Misstates
04:08 17 testimony.

04:08 18 BY MR. DUFFY:

04:08 19 Q. And you -- sorry.

04:08 20 And you achieved that goal all six times that
04:08 21 you measured the freezer in February and March; correct?

04:09 22 MR. TARANTINO: Objection. Mischaracterizes
04:09 23 testimony.

04:09 24 Go ahead.

04:09 25 THE WITNESS: That was my goal to reach.

04:09 1 BY MR. DUFFY:

04:09 2 Q. And -- and you met it all six times in February
04:09 3 and March; correct?

04:09 4 A. According to this document, yes.

04:09 5 Q. And if your goal was 14 inches, how did you go
04:09 6 about making sure that when you were initiating those
04:09 7 fill cycles that it would get to 14 inches?

04:09 8 A. I would measure with a dipstick as it was
04:09 9 filling and continue to let it fill.

04:09 10 Q. Okay. So as it was filling, you would
04:09 11 occasionally come over and put the dipstick in and check
04:09 12 how -- how it was coming?

04:09 13 A. Yes. I measured as it was filling to make sure
04:09 14 that I got to a level in which I felt was appropriate.

04:10 15 Q. On March 3 of 2018 do you recall how long it
04:10 16 took for the liquid nitrogen to reach 14 inches using
04:10 17 the controller fill cycle that you initiated?

04:10 18 A. I do not recall.

04:10 19 Q. If it was more than 30 minutes, would it
04:10 20 surprise you?

04:10 21 A. I do not -- I do not know the fill time for
04:10 22 these tanks. I do not recall.

04:10 23 Q. I understand that. But would it surprise you
04:10 24 if the fill time was longer than 30 minutes?

04:10 25 MR. TARANTINO: Objection. Incomplete

04:10 1 hypothetical.

04:10 2 THE WITNESS: The fill time should be less than
04:10 3 an hour.

04:10 4 BY MR. DUFFY:

04:10 5 Q. Okay. So -- so a fill time on March 3rd should
04:11 6 have been less than an hour; correct?

04:11 7 A. Yes.

04:11 8 Q. And if it was more than an hour, that would
04:11 9 surprise you; correct?

04:11 10 MR. TARANTINO: Objection. Incomplete
04:11 11 hypothetical. Speculation.

04:11 12 THE WITNESS: I would think a tank would fill
04:11 13 in less than an hour, yes.

04:11 14 BY MR. DUFFY:

04:11 15 Q. Okay. And it would surprise you if it took
04:11 16 longer; correct?

04:11 17 MR. TARANTINO: Same objections. Speculation.
04:11 18 Incomplete hypothetical.

04:11 19 DEPOSITION OFFICER: I'm sorry. Repeat your
04:11 20 objection.

04:11 21 THE WITNESS: Yes. Possibly.

04:11 22 BY MR. DUFFY:

04:11 23 Q. And if it took as long as two hours to complete
04:11 24 that fill cycle on March 3rd, you would have done
04:11 25 something more than just close the freezer and leave it

1 DEPOSITION OFFICER'S CERTIFICATE
2

3 STATE OF CALIFORNIA }
4 COUNTY OF LOS ANGELES } ss.
5

6 I, THERESA JOANN PHILLIPS-BLACKWELL, hereby
7 certify:

8 I am a duly qualified Certified Shorthand
9 Reporter in the State of California, holder of
10 Certificate Number CSR 12700 issued by the Court
11 Reporters Board of California and which is in full force
12 and effect. (Fed. R Civ. P. 28(a)).

13 I am authorized to administer oaths or
14 affirmations pursuant to California Code of Civil
15 Procedure, Section 2093(b) and prior to being examined,
16 the witness was first duly sworn by me. (Fed. R. Civ.
17 P. 28(a), 30(f)(1)).

18 I am not a relative or employee or attorney or
19 counsel of any of the parties, nor am I a relative or of
20 such attorney or counsel, nor am I financially
21 interested in this action. (Fed. R. Civ. P. 28).

22 I am the deposition officer that
23 stenographically recorded the testimony in the foregoing
24 deposition and the foregoing transcript is a true record

25 ///

1 of the testimony given by the witness. (Fed. R. Civ. P.
2 30(f)(1)).

3 Before Completion of the deposition, review of
4 the transcript { } was {xx} was not requested. If
5 requested, any changes made by the deponent (and
6 provided to the reporter) during the period allowed, are
7 appended hereto. (Fed. R. Civ. P. 30(e)).

8

9 Dated: September 21, 2020

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